

it would be difficult to engage in the progressive evolution of network architecture, and any changes certainly would be more costly. NPA splits would demand new and complex transactions with customers, and efficient integration and consolidation of local offices would become problematic.²⁶ This would be inconsistent with both Commission and state regulatory objectives and would lead to higher customer costs, slower response times for implementing network improvements and greater conflict between and among customers.²⁷

N11 codes should not be allowed to accrue any unique value vis-a-vis the carrier from whose network that number is assigned and used. Any N11 codes used in local abbreviated dialing should be treated like other numbers, i.e., they should remain subject to carrier administration and Commission oversight as part of a procedure related to the efficient operation of the network.

The issue of recall as explored in the NPRM is directly relevant here. The reasons for recalling or changing numbers today do not always relate to changes in the NANP or to any other demand priority. Many other factors impact on the recall and

²⁶ Burris v. S. Cent. Bell Tel. Co., 540 F. Supp. 905 (S.D. Miss. 1982) (number changed to upgrade network).

²⁷ Exchange carriers may be held to a test of reasonableness, typically permitting customers to reserve numbers, transfer them to successor businesses or take other action. Customers often litigate rights to numbers between themselves, but this does not control the overriding role of the carrier.

reassignment of numbers.²⁸ Thus, the Commission also is mistaken in assuming that N11 numbers "should be available for abbreviated dialing (only) unless and until it becomes necessary to use these codes as area codes."²⁹ Whether or not use is "detrimental to the NANP" cannot be the only basis for recall.³⁰

Any N11 code that is assigned for abbreviated dialing should be able to be recalled by an exchange carrier from an information service provider (or other user) on reasonable terms that protect the public interest, the NANP and, in appropriate cases, the carrier. The role of the exchange carrier is to administer number assignment for the efficient operation of the network.³¹ The Commission must allow this to occur. Thus, the Commission should allow a number to be recalled, for example, if it is used for some illegal purpose, or if its use is inconsistent with Commission policy or rule. An N11 code user that receives it for one use may undermine other governmental policies if it changes to include a different use, even though this does not necessarily threaten the NANP. For example, an information service provider

²⁸ See, e.g., *Burris, supra* (network upgrade); *Parklane Services v. Pacific Bell*, 30 PUC 2d 569 (1989) (illegal use); *In Bonne Chance Cie v. Pacific Tel. & Tel.*, 6 CPUC 2d 800 (1988) (illegal use); *Purcell v. Advanced Tel. Corp.*, 548 So. 2d 1023 (Ala. 1989) (network changes).

²⁹ NPRM at ¶13.

³⁰ *Id.*

³¹ See, *Promotion of Competition and Efficient Use of Spectrum*, 2 FCC Rcd 2910, 2913 (1987) at ¶26.

that uses an N11 code to originate interstate calls and avoids the payment of access charges, rather than using it to provide connections to local information services, will undermine universal service support goals by evading its appropriate share of support payments. This use should not be encouraged and if it occurs, there should be a remedy for such misuse.

Likewise, a carrier that may elect to make an N11 code available may find that the nature of the use casts its own business and reputation in a bad light, or that the customer misrepresents the relationship of the carrier to the user or the use. Again, these are situations unrelated to NANP pressures that should justify change or termination in the assignment.³² Such reasonable conditions have been accepted elsewhere.³³

The Commission has to assure that any N11 code assignment will not become a permanent albatross around the neck of the public as the NANP evolves and further demand for numbering resources accrues.³⁴ The Commission should allow the NANPA

³² Perhaps one of the reasons Cox has sought N11 access instead of 976 access is because of prior 976 activities that have affected the public perception of 976 numbers. A carrier should be able to take reasonable action to distance itself from a user for the same reasons.

³³ Mtn. States Tel. & Tel. v. Denver, 778 P.2d 667 (D.C. Col. 1989).

³⁴ The difficulty in recalling excess CICs does not auger well for the certainty that is needed to assure recall of N11 codes.

latitude to deal with numbering pressures as they develop, regardless of the claims of individual N11 code holders, and it should permit both itself and carriers to review numbering needs and N11 recall conditions on a continuing basis. Narrowing the bases upon which recall may occur at this point in time is likely to backfire on the Commission in the future.

G. The NPRM Does Not Accommodate or Even Address the Various Local and IntraLATA Arrangements That Will Be Necessary to Provide For N11 Code Dialing Arrangements Among Carriers in Certain Markets.

The NPRM anticipates that every exchange carrier will make available N11 codes.³⁵ However, many situations are presented in which the deployment of N11 code-based dialing arrangements by a carrier will require coordination with other carriers. This coordination is required for assuring that an N11 number for local use is not duplicated in the same local area, and also for trunking among offices and service areas of different carriers. There are many cases in the United States in which extended area service (EAS) is offered cooperatively among more than one exchange carrier. Such EAS arrangements are increasing, as they are recognized to provide customer benefits. The NPRM does not discuss the manner in which N11 code arrangements will occur and be accommodated within this exclusively intrastate local regulatory sphere. It is inappropriate to require that one exchange carrier subordinate its network to the marketing

³⁵ NPRM at ¶12.

objectives of another carrier's information services customer.

The NPRM also does not deal with cost recovery between or among carriers that must jointly arrange for N11 coordination in an EAS area.

H. The Commission Assumes that Costs Will Be Minimal and Recovered in a Manner Other Than From the Cost Causer.

The NPRM provides no discussion of cost recovery. At the same time, the Commission elsewhere has declined to extend comparable access-related cost recovery to cost-causing enhanced service providers.³⁶

An N11 code user must subscribe to or contract for the facilities and services needed to achieve its ends. If there is a translation to a seven- or ten-digit number that must be programmed, that user should pay for appropriate facilities. If there is a requirement for trunking and centralization of calls, those costs, too, are directly attributable to the information service provider.

The NPRM discusses routing of N11 numbers in light of 411 and 911 use today.³⁷ Translations will have to be programmed

³⁶ Amendment of Part 69, 3 FCC Rcd 2631 (1988); Amendment of Part 69 Relating to the Creation of Access Charge Subelements for ONA, 6 FCC Rcd 4524 (1991).

³⁷ NPRM at ¶10.

that should not be charged to the end user consumer. While the NPRM discusses routing, it fails to mention issues of call rating, call recording or arrangements for billing and collection.³⁸ A process must be constructed to provide each of those functions for an N11 user. These were identified in the BellSouth petition, but the Commission has failed to address them in the NPRM.³⁹

There will be unique costs for carriers who are required to make N11 codes available to customer.⁴⁰ If the Commission provides for interstate regulation, there must be a framework for cost recovery. The N11 user should be responsible for all relevant costs.

The mandatory nature of the proposed rule constitutes a new and previously unanticipated regulatory change for all carriers. As such, any direct, indirect or otherwise attributable costs should be deemed exogenous for price cap carriers, and otherwise be allowed for ratemaking by rate of return carrier.

³⁸ Id.

³⁹ Letter from Robert L. Capell, III, BellSouth, to James T. McKnight, Cox Enterprises, attached as Exhibit A to the BellSouth petition, at 2-3.

⁴⁰ With some N11 codes, the fundamental programming is not all that will be required to accomplish the transition. For example, 811 is actively used by many exchange carriers in their basic business operations. Additional transitional work, including customer education, will be necessary beyond what is needed for unassigned codes.

I. The Commission Incorrectly Assumes That Private Customer Use of N11 Codes Automatically Should Be Preferred to and Should Displace Exchange Carrier Basic Service or Other Uses that Offer Public Benefit.

As described above, the N11 codes have a special significance within the NANP structure. A careful attitude that conserves these codes has provided insurance that the NANP will remain dynamic enough to accommodate emerging public needs. 911, for example, has become institutionalized as a means of local connection to public emergency services. Exchange carrier use of N11 codes in the provision of exchange service also is well established and provides clear public benefit. It is matched by the use of such codes for similar purposes by other local carriers in cellular and teleport operations.

The mere request for use of these codes by an information service provider doesn't necessarily lead to any public interest benefit, nor does it merit Commission preference over existing uses, or even over the value of reserving these codes. The net public benefit is not apparent. A better public benefit may result from utilization of N11 codes locally, on a recallable basis, to connect to local institutions that clearly serve the public - fire, police, library, state and local government - where there is a code not used by the exchange carrier for basic service-related functions.

**IV. THE PARTICULAR RULE PROPOSED BY THE COMMISSION WOULD
DISSERVE THE PUBLIC INTEREST.**

The NPRM proposes a rule that does not serve the public interest as stated. It is not clear to USTA that any rule that mandates that all exchange carriers undertake significant network and operational changes to provide individual information service providers with an advantageous market position - even effective monopoly control over a unique NANP resource - is in the public interest. The mandate is unnecessary. The wide sweep also is unnecessary. The advantage being delivered to a small group of providers is questionable. In contrast, USTA does not believe any rule is necessary to permit exchange carriers to elect to provide an N11 number for local use on terms that protect the public interest.

If the Commission seeks to maintain a balanced scheme whereby no information service provider, exchange carrier or non-exchange carrier, can use N11 resources without all having similar opportunity, it need say only that.⁴¹ This would facilitate BellSouth's targeted local use and also the deployment of intelligent network and related gateway technology, yet it would avoid the imposition of unnecessary costs on exchange carriers and customers. A broad mandate is both premature and

⁴¹ See NPRM at ¶11.

counterproductive.⁴²

Among specific concerns about the proposed rule:

- o The rule should not be mandatory for all exchange carriers. See proposed rule §§64.140(a) and (b). To the extent that these issues may be assessed in the light of the Commission's ONA structure, it should apply to no additional carriers.⁴³ Small carriers, carriers with technology and similar limitations, and carriers who would be forced to expend unnecessary resources to assign and administer local or other N11 code dialing, should be able to elect not to.
- o Specific N11 codes should not be comprehensively specified. This forces mandatory displacement of any of codes 211, 311, 511 or 711 now being used by an exchange carrier. Proposed rule §64.140(a) excludes any use not assigned or accepted by the NANPA. If there is an interest in a single code being available widely, even nationwide, that should be separately investigated. The 700, 800 and 900 SACs are already open. Exchange carriers should remain free to use codes for purposes related to their basic exchange service business.
- o Any rule should favor use of 900 and 976 (or similar) formats by information service providers over use of N11 codes. A rule should require a showing that neither 900 nor 976 (or similar) formats are adequate. To the extent that there is added value in local three-digit connection using N11 numbers, that value should be paid for and flow back to the exchange carrier and its other customers by virtue of market based pricing.

⁴² Again, this was the core argument made by USTA in its August 15, 1986 Comments and September 5, 1986 Reply Comments on abbreviated dialing options to provide equal access. The rationale is more compelling here.

⁴³ See BellSouth petition at 3-4, citing its handling of the Cox request under its 120-day ONA review process, as well as April 22, 1992 Letter of Ron Stowe, Pacific Telesis, to FCC Chairman Alfred C. Sikes. (Of course, the public interest issues involved in numbering were not considered in the ONA proceeding, and ONA assessment makes an assumption, perhaps unjustified, that this should be viewed only as an interstate matter.)

- o Information service providers that are able to use N11 codes should be required to pay for all costs they cause to be incurred on their behalf to make them available. They should also assume an appropriate share of any fixed (non-traffic sensitive) or other common costs related to the facilities used. In this case, such costs cannot be claimed to have been paid for by others.
- o Any rule should foster development of network gateways if any N11 number use is expected to extend indefinitely. To the extent network capability is not yet available, the Commission should take related action to encourage the efficient development of such capability without mandating uneconomic investment.
- o As stipulated in the NPRM, any authorization should be limited to local uses. It is unclear how proposed rule §64.1401 interacts with §64.1402(b). The latter sets conditions only on local uses, but the former does not limit use to local use.
- o N11-based abbreviated dialing arrangements of any kind should not be permitted to interfere with the NANP. A local use should not have any impacts outside the local area where the use occurs. Extensive switch or operational modifications are not in the public interest and should not be required.
- o Any rule should prohibit an N11 code user from benefiting from automatic presubscription by exchange carrier customers as a result of the assignment. End users should not pay more, to an individual information service provider, solely because of N11 number availability.
- o The Commission must permit wide latitude for N11 number recall for public interest or other causes. Reasons that justify recall are inherently broader than NANP requirements. The term "other uses" in proposed rule §64.1402(a) may cover all NANP requirements, but by implication it excludes all other public interest or carrier bases for reassignment.
- o If N11 code-based numbers are able to be made available for any use, exchange carriers should be entitled to obtain them or use those they already have on the same terms as others.
- o The period for discontinuance must allow flexibility for emergent situations and other cases where the public interest requires it.

- o There is one NANPA. The plural use of "Administrator" in the proposed rule is confusing. It should cover the NANPA and those who have delegated NANP responsibilities.

V. RESPONSES TO SPECIFIC ISSUES OR QUESTIONS RAISED IN THE NPRM.

The nature of the NPRM is such that a sequential response to the questions posed in the NPRM would not be the most constructive way to address the issues. The Commission proceeds from its tentative conclusion at ¶11, but there are areas not covered in the NPRM that impact the Commission's assumptions, discussion and tentative conclusion.

This section summarizes the responses to the questions or specific invitations for comment in the NPRM:

- o Changes to Process N11 Calls, ¶10 - While most switches are presently configured to handle 411 and 911 calls for common purposes, the uses to which other N11 codes may be put is not uniform, nor is the capability of switches to accommodate assignment of N11 codes as the Commission proposes. "Minor modifications" does not accurately reflect the burden that many exchange carriers will have to shoulder. See pp.17-18 infra.
- o Use of 411, ¶11 - USTA does not object to a limitation on the use of 411 to directory assistance and other services that are basic or adjunct to basic service, but only if the use of other N11 codes is similarly restricted or left alone by the NPRM. If any N11 becomes available for use for a non-basic service, exchange carriers should be able to use 411 (or other N11 codes) in the same way. See pp.13-14, infra.
- o Change to Current N11 Uses, ¶12 - The Commission should not displace any N11 code now in use by an exchange carrier for basic service or service that is adjunct to basic service, just as the Commission should not displace 911. It also should not displace 611 or 811, therefore. Those uses are appropriate uses that

present no risk to the NANP and have no adverse impacts. "Efficiency" and "import" must take second place to NANP stability and minimization of costs for consumers. Mandatory displacement will create significant customer confusion and frustration, increase exchange carrier costs and provide no net benefit in comparison with other information service alternatives. Customer dissatisfaction will likely result from such displacement of any existing use. See pp.16-18, infra.

- o Recall of N11 Codes, ¶13 - Availability of N11 codes for abbreviated dialing certainly should not interfere with NANP needs. NANPA should have wide discretion to determine those needs. However, limiting recall to NANP use as area codes is far too limiting a condition. The Commission must state very clearly that codes will be subject to recall for other reasons as well, involving the public interest and also to prevent illegal or other improper use by any user. A notice period must permit any necessary accommodation for emergent need. See pp.20-23, infra.
- o Broader Use, ¶14 - At this time, there is no need or benefit to mandating that N11 codes be more widely available. The Commission and NANPA have the authority to condition or classify types of uses or users. If the Commission expands the universe of potential users or uses, it will accelerate exhaustion of the codes, and there will be additional conflict in resolving these issues. The Commission must assess the impact of any expansion on its other policies as well. See pp.10-11 and 21-23, infra.
- o Property Rights, ¶15 - The user should not gain property rights in any number as against the public interest, the carrier for whose network a number is assigned, or NANPA. This is addressed at pp.18-23, infra.
- o Network Alternatives, ¶16 - Current network-based gateway alternatives are limited. Local N11 code use is the alternative that presents the fewest problems. However, the Commission must remain committed to encouraging the cost-effective development of a robust network, and this NPRM illustrates how a slow pace in fostering new technology deployment in exchange carrier networks harms the public and denies choices to customers without alternatives.
- o Allocation Methods, ¶16 - Allocation methods should not be specified at this time. Exchange carrier decisions

are subject to regulatory conditions, and individual demand will affect the relative value of different mechanisms. No mandatory preference should be instituted by the Commission. Exchange carriers should not be prohibited from using their own network.

- o Jurisdictional Issues, ¶17 - Jurisdictional issues may be addressed in reply comments. There cannot be two numbering schemes, nor can the Commission ignore the fact that number assignment has traditionally been viewed as local. However, the Commission has already recognized the importance of the integrity of the NANP, and the NANP has international impact, in World Zone 1. Jurisdictional concerns should not drive the Commission's decision about whether it should permit use on more than a local basis.
- o Customer Confusion, ¶18 - There is no question but that a decision that provides for a change in the NANP will lend to customer confusion and a more complicated dialing framework, even if the use remains local. The nature of the NANP will change, as will its stability. Customers will have to become acclimated to new procedures and the cost impacts.⁴⁴ They also must begin to differentiate dialing even further, and differentiate those to whom they will be connected via N11 codes. They will not understand why they can use N11 to reach some providers and not others. The Commission is ill-equipped to provide comfort or satisfaction with respect to this problem. It may be perceived as a decline in the quality of service as well, a perception beyond the control of exchange carriers. See pp.8, 16, 18, 25, infra.
- o ¶19 - Alternative methods of dialing are available for these services, using 900 and 976 formats. Other alternatives are not supported by all switch manufacturers; however, N11 code use in the way proposed in the NPRM also is not possible in all switches. There must be an exception for carriers where the costs outweigh the benefits or there is little or no public benefit with a change. See pp.9-11, 16-18, infra.

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See, e.g., Ringing in the Changes, London Times Newspapers, May 3, 1990 (implementation of 071 and 081 dialing).

VI. CONCLUSION.

The Commission must assure itself and the public that any action taken here will protect the public against adverse impact in a number of areas. The proposed rule remains inadequate. It is unclear whether any rule is needed to permit local use of an N11 code where the NANPA and carriers are provided latitude to plan ahead and to protect against both short term and long term problems. Commission action here must provide real public benefit beyond the four corners of any order, and must eliminate all risk of permanent harm.

Respectfully submitted,

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HAND-DELIVERED

March 27, 1992

The Honorable Alfred C. Sikes
Chairman
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

RE: BellSouth Petition for Expedited Declaratory
Ruling Regarding Assignment of N11 Codes

Dear Chairman Sikes:

Earlier this month, BellSouth filed a petition related to the "use, allocation and assignment" of N11 codes. It is our understanding that Cox Enterprises, the prospective recipient of one such code for local use, has articulated to you the argument that grant of the Petition will pose no significant public interest issues. USTA disagrees. USTA believes that numbering assignment issues merit careful consideration, and that the Commission must avoid precipitous action granting or denying the Petition. Numbering is not a commodity service; numbers within the North American Numbering Plan are a limited resource whose allocation goes to the basic operation of the networks of USTA members. Numbering presents unique issues. The Commission can meet its public interest responsibilities best by looking for comment from all interested parties on the impacts of local assignment of N11 resources.

Attached to the BellSouth Petition was a letter from the Administrator of the North American Numbering Plan that concludes that local assignment of N11 codes is undesirable, in part because of pressures on numbering resources and in part because of processes that are now underway to seek avenues to relieve those pressures. USTA is concerned that some members of this Commission may not yet appreciate the complexities involved in numbering, and, more important, the cost risk that will be accepted by this Commission on behalf of the public by action that is not fully informed.

The withdrawal of any NXX code, including any N11 code, from the limited inventory of currently unassigned codes adds risk to

the stability of the North American Numbering Plan. Local assignment of any such code can limit options for its optimum use and its full incorporation into a national addressing fabric. Changes in addressing procedures can have wide impacts, even if they are focused locally or in narrow areas. The Commission has already recognized this in dealing with ISDN numbering. Impacts could require software and hardware changes in the switches of every carrier affected by the new addressing scheme. There is no assurance that the assignment of an N11 code can be limited in its impact to any circumscribed area, or even to the services contemplated.

Options appear to be available that address the private information access interests of Cox, as well as the paramount public interest in conserving numbering resources at this critical time. The Commission should assure there is an opportunity for dealing with them fully and carefully.

These sentiments were expressed generally in a telephone conversation with Ruth Milkman earlier this week. Because it appears that the Commission is having a difficult time determining whether there should be public comment on this issue, we thought it best to confirm this in writing.

Very truly yours,



Martin T. McCue
Vice President and
General Counsel

cc (hand-delivered): Commissioner J. Quello
 Commissioner S. Marshall
 Commissioner A. Barrett
 Commissioner E. Duggan
 Ruth Milkman

USTA Board of Directors
USTA Officers